

2 Ct
Prop.(7)
2/28/01
wpjIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIARANDY YORDY,
Plaintiff

:

No. 1:01-CV-0206

v.

:

SCOTT BROWN, PAUL EVANKO,
BERON F. STEAGER, AND BARRY L.
BRINSER, et al.,
Defendants

:

(Judge Kane)

FILED
HARRISBURG, PA
FEB 27 2001
MARY E. ANDREA CLERK
Deputy Clerk**DEFENDANTS' MOTION FOR ENLARGEMENT
OF TIME IN WHICH TO FILE BRIEF**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, defendants, by their counsel, move the Court for an enlargement of time in which to file the brief in support of their motion to dismiss the complaint. In support hereof, defendants state as follows:

1. This is a civil action for damages brought pursuant to 42 U.S.C. § 1983.
2. The complaint was filed on February 1, 2001, and was personally served upon the named defendants on February 2 and 5, 2001.
3. Defendants filed a motion to dismiss the complaint on February 20, 2001. The brief in support of that motion is due by March 5, 2001.
4. As undersigned counsel advised plaintiff's counsel when concurrence in the motion to dismiss was sought, the focus of the motion to dismiss will be the issue of whether the Court has jurisdiction to hear plaintiff's § 1983 claims against the named troopers in light of plaintiff's guilty pleas on February 15, 2000 before Judge Kleinfelter of the Court of Common Pleas of Dauphin County. (See Exhibit A hereto).

5. At that guilty plea hearing, plaintiff pled guilty to the crimes of aggravated assault, resisting arrest and D.U.I. in connection with the same incidents that are the subjects of this § 1983 action.

6. Defendants' brief in support of the motion to dismiss will present argument concerning the preclusive effect of plaintiff's guilty pleas.

7. In considering defendants' argument and plaintiff's response, the Court should receive benefit from the transcript of plaintiff's guilty plea hearing before Judge Kleinfelter.

8. When undersigned counsel for defendants contacted Judge Kleinfelter's court reporter on February 23, 2001 to obtain a copy of the transcript of the guilty plea hearing, counsel was advised that that transcript had not been prepared yet and that it may take up to thirty (30) additional days for it to be available.

9. While it is not counsel's desire to delay disposition of the motion to dismiss, a considerable amount of judicial and litigant resources conceivably may be saved if defendants' position is correct on the preclusive effect of plaintiff's guilty pleas.

10. The Court should allow defendants to present the transcript of plaintiff's guilty plea hearing so the Court may place plaintiff's pleas in their proper context for this case.

11. If the transcript of plaintiff's guilty plea hearing is received earlier than presently expected, the brief in support of the motion to dismiss will be submitted to the Court shortly after receipt.

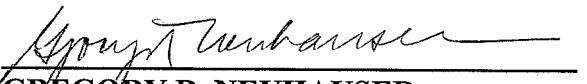
12. Defendants' counsel has contacted plaintiff's counsel who advises that plaintiff does not oppose this motion.

WHEREFORE, defendants' motion for enlargement of time should be granted and the deadline for defendants' brief in support of their motion to dismiss the complaint should be extended to April 5, 2001.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: February 27, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY YORDY,
Plaintiff

:
:
No. 1:01-CV-0206

v.

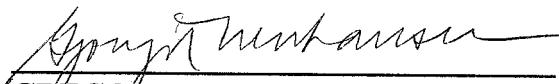
:
:(Judge Kane)

SCOTT BROWN, PAUL EVANKO,
BERON F. STEAGER, AND BARRY L.
BRINSER, et al.,
Defendants

:
:
:

CERTIFICATE OF CONCURRENCE

Gregory R. Neuhauser, Senior Deputy Attorney General, hereby certified that
concurrence in the foregoing motion was sought and obtained from counsel for plaintiff, Spero T.
Lappas, Esquire.



GREGORY R. NEUHAUSER
Senior Deputy Attorney General

DC - 300B (PART 1) *Corrected Commitment*
(Rev. 10-85)COURT COMMITMENT
COUNTY CORRECTIONAL INSTITUTION
Commonwealth of Pennsylvania
vs.
Randy Adam Yordy

COMMITMENT NAME (LAST, FIRST, INITIAL, SUFFIX)

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONSNOTE: Additional supply of this form available at above
address: DC-300B (Part II) attached

SEX <input type="checkbox"/> F <input checked="" type="checkbox"/> M	DATE OF BIRTH 2-3-58	SID	OTN F177106-6	COURT OF INITIAL JURISDICTION <input type="checkbox"/>	COMMON PLEAS <input checked="" type="checkbox"/>
COMMITTING COUNTY/MAGISTERIAL DISTRICT Dauphin		COURT NUMBER 685CD99 Ct.2		DATE - TERM 3/23/2000	

The above defendant after pleading guilty nolo contendre being found guilty was on
March 23rd, 2000 sentenced by Judge/District Justice Hon. J. Kleinfelter to a term of
 not less than 1 years months days nor more than 3 less years months days, or
1 day
 for the offense of Agg. Assault

(Section 18PaCS§2702(a)(3) of the Crimes Code) or (other statute)

It is further ordered that the said defendant be delivered by the proper authority to and treated as the law
 directs at the Dauphin County Prison facility located at 501 Mall Road, Harrisburg, PA 17111.

FINE AMOUNT \$ <u>500.00</u>	COSTS AMOUNT \$ <u>N/A</u> To Be Paid By: <input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> COMMONWEALTH	RESTITUTION
CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON REVERSE SIDE)		EFFECTIVE DATE OF SENTENCE <u>March 23, 2000</u>

This sentence shall be deemed to run concurrent to any existing sentences, effective the date of imposition unless otherwise stipulated below:

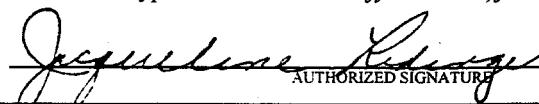
*Ct. 1 - Crim. Attempt (18Pa.CS§2702(a)(2) - Dismissed**Ct. 4 - R.E.A.P. (18Pa.CS§2705) - Merged with Count 2**State sentence to be served in Dauphin County Prison - Agg. sentence is 16 mo. to 5 yrs. Less 3 days*

PROSECUTING ATTORNEY <u>Rozman</u>	DISPOSITION OF NON-INCARCERATION OFFENSE(S)
DEFENSE ATTORNEY <u>J.Lock</u>	
COURT REPORTER <u>Van Someran</u>	(THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)

Certified: A True Copy

MAR 24 2000

(Clerk of the Court)

In witness, whereof I have hereunto set my hand and seal of said
 court, this 23rd day of March 2000
 (corr. comm. typed 3-24-00 to clarify sentence)jr

 AUTHORIZED SIGNATURE

<p>DC - 300B (PART III) (Rev. 10-85) (TO BE ATTACHED TO PART I - COURT COMMITMENT)</p> <p>COURT COMMITMENT COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania vs. <i>Randy Adam Yordy</i> COMMITMENT NAME (LAST, FIRST, INITIAL, SUFFIX)</p>	<p>Type or Print Legibly</p> <p>COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS</p> <p>NOTE: Additional supply of this form available at above address:</p>
<p>COURT NUMBER</p> <p>685CD99 Cts.3,5,6</p>	<p>OFFENSE TRACKING NUMBER (OTN)</p> <p>F177106-6</p>

The above defendant after pleading guilty nolo contendre being found guilty was on
March 23rd, 2000 sentenced by *Judge/District Justice* Hon. J. Kleinfelter to a term of
not less than 2 years 0 months 0 days nor more than 1 less years 1 day months 0 days, or
each count for the offense of *DUI and Resisting Arr. (2)*

(Section 75PS§3731(a)(1-4) of the Crimes Code) or (other statute)
18Pa.CS§5104

FINE		COSTS		RESTITUTION	
AMOUNT \$ <u>1000.00 Ct.3</u> <u>500.00 Cts.5,6</u>		AMOUNT \$ <u>N/A</u>			
To Be Paid To: <input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> COMMONWEALTH		To Be Paid By: <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> COMMONWEALTH			
CREDIT FOR TIME SERVE				EFFECTIVE DATE OF SENTENCE <i>March 24, 2000</i>	

This sentence shall be deemed to run concurrent to any existing sentences, effective the date of imposition unless otherwise stipulated below.

Ct. 3 is CS to Ct. 2 Ct. 5 is CS to Ct. 3 Ct. 6 is CC to Ct. 5

COURT NUMBER	OFFENSE TRACKING NUMBER (OTN)	

The above defendant after pleading guilty nolo contendre being found guilty was on _____, _____ sentenced by *Judge/District Justice* _____ to a term of not less than _____ years _____ months _____ days nor more than _____ years _____ months _____ days, or for the offense of _____

(Section of the Crimes Code) or (other statute)

FINE AMOUNT \$ _____ To Be Paid To: <input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> COMMONWEALTH	COSTS AMOUNT \$ <u>N/A</u> To Be Paid By: <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> COMMONWEALTH	RESTITUTION
CREDIT FOR TIME SERVED		EFFECTIVE DATE OF SENTENCE

This sentence shall be deemed to run concurrent to any existing sentences, effective the date of imposition unless otherwise stipulated below:

Certified: A True Copy

Mar 24 2000
(SEAL)

John W. Johnson
(Clerk of the Court)

In witness to the above sentence(s) for offense(s) as well as those found on the reverse side of this document, I have hereunto set my hand and seal of said court

This *24th* day of *March* *2000*

() *Pinus* *taeda* L.

Jacqueline Pedigo

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY YORDY, :
Plaintiff :
: No. 1:01-CV-0206
v. :
: (Judge Kane)
SCOTT BROWN, PAUL EVANKO, :
BERON F. STEAGER, AND BARRY L. :
BRINSER, et al., :
Defendants :
:

CERTIFICATE OF SERVICE

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on February 27, 2001, I caused to be served a true and correct copy of the foregoing document **Defendants' Motion for Enlargement of Time in Which to File Brief**, by depositing it in the United States mail, first-class postage prepaid to the following:

Spero T. Lappas, Esquire
205 State Street
Harrisburg, PA 17101-0808



GREGORY R. NEUHAUSER
Senior Deputy Attorney General